

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSHUA FORSTER,

Plaintiff,

v.

STEPHANIE CLENDENIN, et al.,

Defendants.

Case No.: 1:22-cv-01191 CDB (PC)

**ORDER CLARIFYING DOCKET AND
DIRECTING CLERK OF COURT TO
REMOVE CERTAIN NOTATIONS**

**ORDER DIRECTING DEFENDANTS TO
FILE CONSENT/DECLINE OF U.S.
MAGISTRATE JUDGE JURISDICTION
FORM**

Plaintiff Joshua Forster is a civil detainee proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. BACKGROUND

Plaintiff initiated this action with the filing of his complaint on September 14, 2022. (Doc. 1.) Following screening of the complaint, this action proceeds against Defendants Clendenin and Price for violations of Plaintiff's Fourteenth Amendment rights and related state law violations. (Doc. 11.)

On May 8, 2023, the Court issued its order directing Plaintiff to submit service documents. (Doc. 12.) Plaintiff did so on May 19, 2023. (Doc. 13.) Thereafter, on May 24, 2023, the Court issued its Order Directing Service by United States Marshals Service Without Prepayment of Costs. (Doc. 14.)

1 On June 14, 2023, counsel for Defendants filed the Waivers of Service of Summons as to
2 Defendants Clendenin and Price. (Doc. 15 at 1 & Doc. 15-1 at 1.) Shortly thereafter, Defendants
3 filed their answer to Plaintiff's complaint (Doc. 16) and the Court issued its Order Referring Case
4 to Post-Screening ADR and Staying Case for 90 Days (Doc. 17).

5 On August 2, 2023, Plaintiff filed notice that he believes an early settlement conference
6 would be productive. (Doc. 18.) Defendants have not yet responded; their response is due no later
7 than September 7, 2023.

8 On August 8, 2023, the United States Marshal filed a USM-285 form indicating personal
9 service was effected as to Defendant Clendenin on August 8, 2023. (Doc. 19.) On August 11,
10 2023, the United States Marshal filed a USM-285 form indicating personal service was effected
11 as to Defendant Price on August 11, 2023. (Doc. 19.)

12 II. DISCUSSION

13 With the filing of the USM-285 forms by the United States Marshal on August 8 and
14 August 11, 2023, the docket for this matter currently reflects that answers are due from
15 Defendants Clendenin and Price on August 29, 2023 and September 1, 2023, respectively.
16 However, because the Defendants answered Plaintiff's complaint on July 21, 2023, no answers
17 are necessary or due.

18 The Court's May 24, 2023, order directed the United States Marshal "to notify the
19 following defendants of the commencement of this action and to request a waiver of service in
20 accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c): Stephanie
21 Clendenin, Brandon Price" within ten days of the date of service of the order. (*See* Doc. 14 at 2.)
22 Instead, 21 days later, the waivers were filed with the Court. (*See* Doc. 15 & Doc. 15-1.) The
23 Court presumes the United States Marshal was unaware of the Defendants' waivers of personal
24 service because the waiver forms were filed on the docket by defense counsel. Significantly, the
25 May 24, 2023 order states: **"If defendants waive service, they are required to return the
26 signed waivers to the Marshals Service. The filing of an answer or a responsive motion does
27 not relieve defendants of this requirement, and the failure to return the signed waivers may
28 subject defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P.**

1 **4(d)(2).**” (*See* Doc. 14 at 2, emphasis in original.) At this time, presuming an oversight on the part
2 of Defendants, the Court will not order Defendants to pay the costs of service. However, the
3 Court cautions Defendants that it may order payments of these costs in the future if the Court’s
4 orders are not obeyed.

5 As noted above, efforts to effect personal service were undertaken by the United States
6 Marshal pursuant to the Court’s May 24, 2023 order and, in fact, personal service was effected
7 after the Defendants answered the complaint.¹

8 Out of an abundance of caution, and to ensure the docket for this action is clear, the Court
9 will direct the Clerk of the Court to remove the notations concerning answer due dates from the
10 docket entries dated August 8 and August 11, 2023. Additionally, the Court will direct
11 Defendants to file a Consent/Decline of U.S. Magistrate Judge Jurisdiction form. The form must
12 be filed prior to the Defendants’ notice concerning whether an early settlement conference would
13 be productive, because if all parties were to consent to the jurisdiction of the undersigned, any
14 early settlement conference would be heard before another magistrate judge rather than the
15 undersigned as the assigned magistrate judge.

16 **III. CONCLUSION AND ORDER**

17 Accordingly, and for the reasons given above, **IT IS HEREBY ORDERED** that:

- 18 1. The Clerk of the Court is **DIRECTED** to remove the following notations:
- 19 a. from Docket Entry number 19: “answer due 8/29/2023”
- 20 b. from Docket Entry number 20: “answer due 9/1/2023;” and
- 21 2. Defendants **SHALL** file a Consent/Decline of U.S. Magistrate Judge Jurisdiction form
22 **within 7 days** of the date of this order.

23 IT IS SO ORDERED.

24 Dated: **August 15, 2023**

25 
UNITED STATES MAGISTRATE JUDGE

26

27 _____

28 ¹ The order directs the United States Marshal to personally serve the Defendants “[i]f a waiver of service is not returned by a defendant within sixty days of the date of mailing the request for waiver” (*See* Doc. 14 at 2.)